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इस भाग में भिन्न पृष्ठ संख्या की जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 16th March, 1978:—

BILL NO. I OF 1978

A Bill further to amend the Presidency-towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Insolvency Laws (Amendment) Act, 1978.

Short title
and
commen-
cement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Presidency-towns Insolvency Act, 1909,—

Amend-
ment of
Act 3
of 1909.

(a) section 9 (excluding the Explanation) shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

“(2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein:

Provided that where a debtor makes an application under sub-section (5) for setting aside an insolvency notice—

(a) in a case where such application is allowed by the Court, he shall not be deemed to have committed an act of insolvency under this sub-section; and

(b) in a case where such application is rejected by the Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later:

Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily, outside India, unless the creditor obtains the leave of the Court therefor.

(3) An insolvency notice under sub-section (2) shall—

(a) be in the prescribed form;

(b) be served in the prescribed manner;

(c) specify the amount due under the decree or order and require the debtor to pay the same or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent;

(d) specify for its compliance a period of not less than one month after its service on the debtor or, if it is to be served on a debtor residing, whether permanently or temporarily, outside India, such period (being not less than one month) as may be specified by the order of the Court granting leave for the service of such notice;

(e) state the consequences of non-compliance with the notice.

(4) No insolvency notice shall be deemed to be invalid by reason only that the sum specified therein as the amount due under the decree or order exceeds the amount actually due, unless the debtor, within the period specified in the insolvency notice for its compliance, gives notice to the creditor that the sum specified in the insolvency notice does not correctly represent the amount due under the decree or order:

Provided that if the debtor does not give any such notice as aforesaid, he shall be deemed to have complied with the insolvency notice if, within the period specified therein for its compliance, he takes such steps as would have constituted a compliance with the insolvency notice had the actual amount due been correctly specified therein.

(5) Any person served with an insolvency notice may, within the period specified therein for its compliance, apply to the Court to set aside the insolvency notice on any of the following grounds, namely:—

(a) that he has a counter-claim or set off against the creditor which is equal to or is in excess of the amount due

under the decree or order and which he could not, under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed;

(b) that he is entitled to have the decree or order set aside under any law providing for the relief of indebtedness and that—

(i) he has made an application before the competent authority under such law for the setting aside of the decree or order; or

(ii) the time allowed for the making of such application has not expired;

(c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application.”;

(b) in section 112, in sub-section (2), after clause (m), the following clause shall be inserted, namely:—

“(mm) the form of the insolvency notice under clause (a), and the manner in which such notice may be served under clause (b), of sub-section (3) of section 9.”.

3. In the Provincial Insolvency Act, 1920,—

Amend-
ment of
Act 5
of 1920.

(a) section 6 (excluding the *Explanation*) shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

“(2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein:

Provided that where a debtor makes an application under sub-section (5) for setting aside an insolvency notice—

(a) in a case where such application is allowed by the District Court, he shall not be deemed to have committed an act of insolvency under this sub-section; and

(b) in a case where such application is rejected by the District Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later:

Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily, outside India, unless the creditor obtains the leave of the District Court therefor.

(3) An insolvency notice under sub-section (2) shall—

- (a) be in the prescribed form;
- (b) be served in the prescribed manner;
- (c) specify the amount due under the decree or order and require the debtor to pay the same or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent;
- (d) specify for its compliance a period of not less than one month after its service on the debtor or, if it is to be served on a debtor residing, whether permanently or temporarily, outside India, such period (being not less than one month) as may be specified by the order of the District Court granting leave for the service of such notice;
- (e) state the consequences of non-compliance with the notice.

(4) No insolvency notice shall be deemed to be invalid by reason only that the sum specified therein as the amount due under the decree or order exceeds the amount actually due, unless the debtor, within the period specified in the insolvency notice for its compliance, gives notice to the creditor that the sum specified in the insolvency notice does not correctly represent the amount due under the decree or order:

Provided that if the debtor does not give any such notice as aforesaid, he shall be deemed to have complied with the insolvency notice if, within the period specified therein for its compliance he takes such steps as would have constituted a compliance with the insolvency notice had the actual amount due been correctly specified therein.

(5) Any person served with an insolvency notice may, within the period specified therein for its compliance, apply to the District Court to set aside the insolvency notice on any of the following grounds, namely:—

- (a) that he has a counter-claim or set-off against the creditor which is equal to or is in excess of the amount due under the decree or order and which he could not, under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed;
- (b) that he is entitled to have the decree or order set aside under any law providing for the relief of indebtedness and that—
 - (i) he has made an application before the competent authority under such law for the setting aside of the decree or order; or
 - (ii) the time allowed for the making of such application has not expired;

(c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application.”;

(b) in section 79, in sub-section (2), clause (a) shall be re-lettered as clause (aa) thereof, and before clause (aa) as so re-lettered, the following clause shall be inserted, namely:—

“(a) the form of the insolvency notice under clause (a), and the manner in which such notice may be served under clause (b), of sub-section (3) of section 6;”.

STATEMENT OF OBJECTS AND REASONS

The difficulties experienced by a litigant in India in executing even a simple money decree have been commented upon by the Privy Council as well as by the Law Commission and the Expert Committee on Legal Aid. The Law Commission in its Third Report on the Limitation Act, 1908, has recommended that the most effective way of instilling a healthy fear in the mind of the dishonest judgment-debtor would be to enable the court to adjudicate him an insolvent if he does not pay the decretal amount after notice by the decree-holder, by specifying a period within which it should be paid, on the lines of the amendment made to the Presidency-towns Insolvency Act, 1909 in Bombay. This recommendation was reiterated by the Law Commission in its Twenty-sixth Report on Insolvency Laws.

2. The Expert Committee on Legal Aid was also of the view that the above recommendation of the Law Commission should be implemented immediately without waiting for the enactment of a comprehensive law of insolvency.

3. It is, therefore, proposed to amend the Presidency-towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, to add a new act of insolvency, namely, that a debtor has not complied with the insolvency notice served on him by a creditor, who has obtained a decree or order against him for the payment of money, within the period specified in the notice. If the amount shown in the insolvency notice is not correct, it would be invalidated if the debtor gives notice to the creditor disputing the amount. The debtor can, however, apply to the court to have the insolvency notice set aside on the ground, among others, that he is entitled to have the decree re-opened under any law relating to relief of indebtedness or that the decree is not executable under any such law.

The Bill seeks to achieve the above objects.

SHANTI BHUSHAN.

NEW DELHI;
The 25th February, 1978.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill seeks to amend section 112 of the Presidency-towns Insolvency Act, 1909 and section 79 of the Provincial Insolvency Act, 1920, so as to empower the High Courts concerned to make rules for prescribing the form of the insolvency notice and the manner of service of such notice on the debtor. As these pertain to matters of detail and procedure, the delegation of legislative power is normal in character.

S. S. BHALE RAO,
Secretary-General.

